APPENDIX

IN THE

Supreme Court of the United States

October Term, 1977
No. 77-1378

JAPAN LINE, LTD., *et al.*,

Appellants,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Appellees.

On Appeal From the Supreme Court of the State of California.

Filed March 28, 1978.

Jurisdiction Postponed June 12, 1978.

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Appellants,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Appellees.

On Appeal From the Supreme Court of the State of California.

APPENDIX

Chronological List of Relevant Docket Entries.

May 18, 1971—Plaintiffs' Complaint for recovery of taxes for fiscal year 1970-71 filed in the California Superior Court, Los Angeles County (Case No. SOC 25617).

June 14, 1971—Defendants' Answer to said Complaint (Case No. SOC 25617) filed.

February 2, 1972—Plaintiffs' Complaint for recovery of taxes for fiscal year 1971-72 filed in the California Superior Court, Los Angeles County (Case No. SOC 27593).

April 5, 1972—Defendants' Answer to said Complaint (Case No. SOC 27593) filed.

February 15, 1973—Plaintiffs' Complaint for recovery of taxes for fiscal year 1972-73 filed in the California Superior Court, Los Angeles County (Case No. SOC 30557).

March 23, 1973—Defendants' Answer to said Complaint (Case No. SOC 30557) filed.

October 10, 1973—Plaintiffs' Motion to Consolidate the above three actions heard and granted by the Superior Court.

March 14, 1974—Intended Decision in favor of plaintiffs filed following trial in the Superior Court.

October 15, 1974—Findings of Fact and Conclusions of Law and Judgment entered in favor of plaintiffs by the Superior Court.

December 12, 1974—Notice of Appeal filed by defendants in the Superior Court.

September 17, 1975—Agreed Statement in Lieu of Clerk's and Reporter's Transcripts filed by plaintiffs

and defendants in the California Court of Appeal, Second Appellate District, (hereafter, Court of Appeal).

December 22, 1975—Defendants' Opening Brief filed in the Court of Appeal.

March 19, 1976—Plaintiffs' Brief filed in the Court of Appeal.

May 17, 1976—Defendants' Reply Brief filed in the Court of Appeal.

July 16, 1976—Plaintiffs' Supplemental Brief filed in the Court of Appeal.

July 30, 1976—Defendants' Supplemental Brief filed in the Court of Appeal.

August 27, 1976—Opinion of the Court of Appeal filed, reversing the decision of the Superior Court and entering judgment in favor of defendants.

September 13, 1976—Plaintiffs' Petition for Rehearing filed in the Court of Appeal.

September 22, 1976—Plaintiffs' Petition for Rehearing denied by the Court of Appeal.

October 6, 1976—Plaintiffs' Petition for Hearing filed in the California Supreme Court.

October 27, 1976—Defendants' Response to Plaintiffs' Petition for Hearing filed in the California Supreme Court.

November 24, 1976—Plaintiffs' Petition for Hearing granted by the California Supreme Court.

November 18, 1977—Opinion of the California Supreme Court filed, affirming the decision of the Court of Appeal.

December 9, 1977—Plaintiffs' Petition for Rehearing filed in the California Supreme Court.

December 28, 1977—Plaintiffs' Petition for Rehearing denied by, and Order Modifying Opinion filed in, the California Supreme Court.

February 28, 1978—Notice of Appeal by plaintiffs to the United States Supreme Court filed in the California Supreme Court.

Complaint.

Superior Court of the State of California, for the County of Los Angeles.

JAPAN LINE, LTD.; KAWASAKI KISEN KAISHA, LTD.; MITSUI O.S.K. LINES, LTD; NIPPON YUSEN KAISHA; SHOWA SHIPPING CO., LTD.; YAMASHITA-SHINNIHON STEAMSHIP CO., LTD., foreign corporations, Plaintiffs, v. COUNTY OF LOS ANGELES AND CITY OF LOS ANGELES, Defendants. NO. SOC 25617.

Original Filed: May 8, 1971.

Plaintiffs allege:

I

Plaintiffs are and at all times hereinafter mentioned were, corporations duly organized and existing under the laws of Japan engaged primarily in the operation of steamships and containerships in the carriage of cargo in foreign commerce.

II

Defendant COUNTY OF LOS ANGELES is, and at all times hereinafter mentioned was, a political subdivision of the State of California.

III

Defendant CITY OF LOS ANGELES is, and at all times hereinafter mentioned was, a municipal corporation and political subdivision of the State of California. At all times mentioned herein, defendant COUNTY OF LOS ANGELES acted in part for defendant CITY OF LOS ANGELES in levying and collecting the taxes which are the subject matter of this complaint.

IV

On March 1, 1970, at 12:01 a.m., plaintiffs were the owners and lessees of certain cargo containers located in the City of Los Angeles. Said containers are an integral part of the movement of goods in foreign commerce by plantiffs' vessels, which are registered under the laws of Japan, where each of plaintiffs has its corporate and commercial domicile and the home port of its vessels and containers. At all times when said containers are physically present in the City of Los Angeles, they are so located only for short periods of time sufficient for the delivery and loading of the international cargo shipments contained therein.

V

The Assessor of the County of Los Angeles assessed against the subject cargo containers, and the Tax Collector of the County of Los Angeles levied taxes thereon as follows:

Plaintiff-Taxpayer	Appraisal	Assessment	Tax Levied
Japan Line	$ 765,000	$191,250	$20,512.32
Kawasaki Kisen Kaisha	1,250,100	312,525	33,519.55
Mitsui O.S.K. Line	1,251,000	312,750	33,543.68
Nippon Yusen Kaisha	1,389,000	347,250	37,243.95
Showa Shipping Co.	595,000	148,750	15,954.03
Yamashita-Shinnihon	824,000	206,000	22,094.32

Between December 28, 1970 and March 2, 1971, plaintiffs herein paid, under written protest, the amount

of tax respectively levied against each of them. The grounds of the protest were set out in an exhibit accompanying the payment of the tax, which grounds are set forth in Exhibit "A" attached hereto and incorporated herein.

VI

At 12:01 a.m., on March 1, 1970, none of the cargo containers physically present within the City of Los Angeles had acquired taxable situs in the County or City of Los Angeles. The subject containers were and are constantly committed to and engaged in the process of importation to and exportation from the United States and are integral to the transportation of goods aboard plaintiffs' vessels exclusively in foreign commerce. As instrumentalities of foreign commerce, and due to their integral participation and exclusive use in foreign commerce and foreign movements of cargo, the containers were subject to taxation exclusively in Japan. Therefore, the said taxes were unlawfully levied and collected in that the subject containers were exempt from taxation by United States Constitution Article I Sections 8, 9 and 10, Amendment V and Amendment XIV; the Treaty of Friendship, Commerce and Navigation between the United States and Japan (especially Article XI and XVII) and, pursuant to the most-favored-nation provisions of that Treaty, (Article VI Section 4 and Article XI Section 3) under treaties with other nations; California Constitution Article 13 Sections 1 and 4; and Revenue and Taxation Code Section 201. The levying and collecting of the subject taxes subjected plaintiffs and the containers to double taxation, as between California and Japan, in violation of Revenue and Taxation Code Section 102. As movable property without a "normal place

of return" between movements, the containers have situs exclusively at plaintiffs' principal place of business, Japan. (See, e.g., 18 California Administrative Code 205).

VII

The subject taxes were unlawfully levied and collected in that the assessment upon which the taxes were based was not made "on discovery" of the presence of the subject containers as required by Revenue and Taxation Code Section 531.

VIII

No refund of said taxes, or any part thereof, has been made to plaintiffs.

WHEREFORE, plaintiffs pray for judgment against defendants in the respective amounts of taxes levied and paid as set forth in Paragraph V of this Complaint, together with interest thereon from the date of payment at the maximum rate of interest, which rate is no less than 8½% per annum from the date of payment, for costs of suit, and for such other and further relief as may be just and proper.

Dated: April 30, 1971.

GRAHAM & JAMES
FRANCIS L. TETREAULT
REED M. WILLIAMS
DONALD H. READ

By /s/ Reed M. Williams
REED M. WILLIAMS
Attorneys for Plaintiffs

EXHIBIT A

1) The subject containers as "movable property" have not acquired situs in Los Angeles County under the standards of Rule 205 of the California Administrative Code, Title 18; and, pursuant to that Rule, have situs only at the principal place of business of the taxpayer, Japan.

2) The subject containers are integral to taxpayer's movement of cargo in foreign commerce.

a) They are instrumentalities of foreign commerce and are taxable only in taxpayer's domicile, Japan, under the "home port" doctrine and under the "commerce clause" of the United States Constitution, Article I, Section 8, Clause 3; Article XIII, Section 1, of the California Constitution; and Revenue and Taxation Code, Section 201, and the due process clauses of the United States Constitution Amendments V and XIV.

b) The containers are constantly engaged in the process of importation to and exportation from the United States, and, as such, are exempt from taxation under the "import-export" and "commerce" clauses [Article 1, §§10 and 8(3)] of the United States Constitution and under Article XIII, Section 1, of the California Constitution, and under Revenue and Taxation Code, Section 201, and the due process clauses, Amendments V and XIV to the United States Constitution.

3) The containers are integral parts of the vessels which transport the cargo and as such are exempt under Article XIII, Section 4, of the California Constitution, and Section 201 of the Revenue and Taxation Code.

4) These containers are exempt from taxation under the Treaty of Friendship, Commerce and Navigation between the United States and Japan and, pursuant to the most-favored-nation provision of that treaty, under treaties with other nations.

5) The presence of these containers in Los Angeles County was well known to the general public and the Assessor during the regular assessment period in 1969 and the escaped assessment is, therefore, void as not made "on discovery" as required by Revenue and Taxation Code Section 531.

DECLARATION

State of California, County of Los Angeles—ss.

I, the undersigned, say:

I am a member of the firm of GRAHAM & JAMES, attorneys for the Plaintiffs herein; said Plaintiffs are corporations, all of whose officers are absent from the County of Los Angeles, California, where said attorneys have their offices, and that I make this verification for and on behalf of said party for that reason; the foregoing document is true of my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 30, 1970 at Long Beach, California.

/s/ Reed M. Williams
REED M. WILLIAMS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

JAPAN LINE, LTD.; KAWASAKI KISEN KAISHA, LTD.; MITSUI O.S.K. LINES, LTD.; NIPPON YUSEN KAISHA; SHOWA SHIPPING CO., LTD.; YAMASHITA-SHINNIHON STEAMSHIP CO., LTD.,
Plaintiffs,

v. COUNTY OF LOS ANGELES, CITY OF LOS ANGELES,
Defendants.

CASE NUMBER SOC 25017

CERTIFICATE OF ASSIGNMENT OR TRANSFER

A civil action or proceeding presented for filing in a district other than the Central District must be accompanied by this certificate. An action for personal injury, wrongful death or damage to property presented for filing in the Central District must be accompanied by this certificate. If the ground is the residence of a party, his name and residence shall be stated.

[X] The undersigned declares that the above entitled matter is filed for proceedings in the South District of the Superior Court under Rule 2, Section 3 of this court for the checked reason:

		Nature of Action	Ground
☐	1	Abandonment	Petitioner resides within the district
☐	2	Adoption	Petitioner resides within the district
☐	3	Conservator	Petitioner or conservatee resides within the district
☐	4	Contract	Performance in the district is expressly provided for
☐	5	Equity	The cause of action arose within the district
☐	6	Eminent Domain	The property is located within the district
☐	7	Family Law	Plaintiff, defendant, petitioner or respondent resides within the district
☐	8	Forceable Entry	The property is located within the district
☐	9	Guardianship	Petitioner or ward resides within the district
☐	10	Habeas Corpus	No action pending, the person is held within the district
☐	11	Mandate*	The defendant functions wholly within the district
☐	12	Name Change	The petitioner resides within the district
☐	13	Personal Property	The property is located within the district
☐	14	Probate	Decedent resided or petitioner resides within the district
☐	15	Prohibition*	The defendant functions wholly within the district
☐	16	Review*	The defendant functions wholly within the district
☐	17	Small Claims Appeal	The lower court is located within the district
☐	18	Title to Real Property	The property is located within the district
☐	19	TORT	The cause of action arose within the district
☐	20	TORT*	The cause of action arose outside of this county
☐	21	Transferred Action	The lower court is located within the district
☐	22	Unlawful Detainer	The property is located within the district
	23	Refund of Taxes	The property is located within the district.

The residence of the petitioner, respondent, deceased, conservatee, ward, plaintiff, or defendant is San Pedro, Wilmington, Long Beach (Address) Plaintiffs (Name)

☐ Under Rule 2, Section 6, I allege that for the convenience of witnesses and to promote the ends of justice the matter should be transferred to the South District.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on May 13, 1971 at Long Beach, California.

So Ordered MAY 18 1971

CHARLES C. STRATTON

(Signature of Attorney)

*Prerogative writs concerning a court of inferior jurisdiction and Tort Actions arising outside of the county may be filed in Central District only.

Complaint.

Recovery of Taxes.

Superior Court of the State of California, for the County of Los Angeles.

Japan Line Ltd.; Mitsui O.S.K. Lines, Ltd.; Kwasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Showa Shipping Co., Ltd.; Yamashita-Shinnihon Steamship Co., Ltd., foreign corporations, Plaintiffs, v. County of Los Angeles and City of Los Angeles, Defendants. No. SOC 27593.

Original Filed: Feb. 2, 1972.

Plaintiffs allege;

I

Plaintiffs are and at all times hereinafter mentioned were, corporations duly organized and existing under the laws of Japan engaged primarily in the operation of steamships and containerships in the carriage of cargo in foreign commerce.

II

Defendant COUNTY OF LOS ANGELES is, and at all times hereinafter mentioned was, a political subdivision of the State of California.

III

Defendant CITY OF LOS ANGELES is, and at all times hereinafter mentioned was, a municipal corporation and political subdivision of the State of California. At all times mentioned herein, defendant COUNTY OF LOS ANGELES acted in part for defendant CITY OF LOS ANGELES in levying and collecting the taxes which are the subject matter of this complaint.

IV

On March 1, 1971, at 10:01 A.M., plaintiffs were the owners and lessees of certain cargo containers located in the City of Los Angeles. Said containers are an integral part of the movement of goods in foreign commerce by plaintiff's vessels, which are registered under the laws of Japan, where each of plaintiffs has its corporate and commercial domicile and the home port of its vessels and containers. At all times when said containers are physically present in the City of Los Angeles, they are so located only for short periods of time sufficient for the delivery and loading of the international cargo shipments contained therein.

V

The Assessor of the County of Los Angeles assessed against the subject cargo containers, and the Tax Collector of the County of Los Angeles levied taxes thereon as follows:

Plaintiff-Taxpayer	Appraisal	Assessment	Tax Levied
Japan Line	$ 885,500	$221,375	$26,617.46
Kawasaki Kisen Kaisha	977,720	244,430	29,389.52
Mitsui O.S.K. Line	1,228,860	307,215	36,938.60
Nippon Yusen Kaisha	1,213,400	303,350	36,473.89
Showa Shipping Co.	553,200	138,300	16,628.77
Yamashita-Shinnihon	835,400	208,850	25,111.49

Between August 14, 1971, and August 31, 1971, plaintiffs herein paid, under written protest, the amount of tax respectively levied against each of them. The grounds of the protest were set out in an exhibit accompanying the payment of the tax, which grounds are set forth in Exhibit "A" attached hereto and incorporated herein.

VI

At 12:01 A.M., on March 1, 1971, none of the cargo containers physically present within the City of

Los Angeles had acquired taxable situs in the County or City of Los Angeles. The subject containers were and are constantly committed to and engaged in the process of importation to and exportation from the United States and are integral to the transportation of goods aboard plaintiff's vessels exclusively in foreign commerce. As instrumentalities of foreign commerce, and due to their integral participation and exclusive use in foreign commerce and foreign movements of cargo, the containers were subject to taxation exclusively in Japan. Therefore, the said taxes were unlawfully levied and collected in that the subject containers were exempt from taxation by United States Constitution Article I Sections 8, 9 and 10, Amendment V and Amendment XIV; the Treaty of Friendship, Commerce and Navigation between the United States and Japan (especially Article XI and XVII) and, pursuant to the most-favored-nation provisions of that Treaty, (Article VI Section 4 and Article XI Section 3) under treaties with other nations; California Constitution Article 13 Sections 1 and 4; and Revenue and Taxation Code Section 201. The levying and collecting of the subject taxes subjected plaintiffs and the containers to double taxation, as between California and Japan, in violation of Revenue and Taxation Code Section 102. As movable property without a "normal place of return" between movements, the containers have situs exclusively at plaintiff's principal place of business, Japan. (See, e.g., 18 California Administrative Code 205.)

VII

The subject taxes were unlawfully levied and collected in that the assessment upon which the taxes were based was not made "on discovery" of the presence

of the subject containers as required by Revenue and Taxation Code Section 531.

VIII

No refund of said taxes, or any part thereof, has been made to plaintiffs.

WHEREFORE, plaintiffs pray for judgment against defendants in the respective amounts of taxes levied and paid as set forth in Paragraph V of this Complaint, together with interest thereon from the date of payment at the maximum rate of interest, which rate is no less than 8½% per annum from the date of payment, for costs of suit, and for such other and further relief as may be just and proper.

DATED: February 1, 1972

GRAHAM & JAMES

By /s/ Reed M. Williams
Reed M. Williams
Attorneys for Plaintiffs

DECLARATION

State of California, County of Los Angeles—ss.

I, the undersigned, say:

I am a member of the firm of GRAHAM & JAMES, attorneys for the Plaintiffs herein; said Plaintiffs are corporations, all of whose officers are absent from the County of Los Angeles, California, where said attorneys have their offices, and that I make this verification for and on behalf of said party for that reason; the foregoing document is true of my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1, 1972, at Long Beach, California.

/s/ Reed M. Williams
REED M. WILLIAMS

EXHIBIT A

1) The subject containers as "movable property" have not acquired situs in Los Angeles County under the standards of Rule 205 of the California Administrative Code, Title 18; and, pursuant to that Rule, have situs only at the principal place of business of the taxpayer, Japan.

2) The subject containers are integral to taxpayer's movement of cargo in foreign commerce.

a) They are instrumentalities of foreign commerce and are taxable only in taxpayer's domicile, Japan, under the "home port" doctrine and under the "commerce clause" of the United States Constitution, Article I, Section 8, Clause 3; Article XIII, Section 1, of the California Constitution; and Revenue and Taxation Code, Section 201, and the due process clauses of the United States Constitution Amendments V and XIV.

b) The containers are constantly engaged in the process of importation to and exportation from the United States, and, as such, are exempt from taxation under the "import-export" and "commerce" clauses (Article I, Sections 10 and 8(3) of the United States Constitution and under Article XIII, Section 1, of the California Constitution, and under Revenue and Taxation Code, Section 201, and the due process clauses, Amendments V and XIV to the United States Constitution.

3) The containers are integral parts of the vessels which transport the cargo and as such are exempt under Article XIII, Section 4, of the California Constitution, and Section 201 of the Revenue and Taxation Code.

4) These containers are exempt from taxation under the Treaty of Friendship, Commerce and Navigation between the United States and Japan and, pursuant to the most-favored-nation provision of that treaty, under treaties with other nations.

5) The presence of these containers in Los Angeles County was well known to the general public and the Assessor during the regular assessment period in 1971 and the escaped assessment is, therefore, void as not made "on discovery" as required by Revenue and Taxation Code Section 531.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

JAPAN LINE, LTD; MITSUI O.S.K. LINES LTD; KAWASAKI KISEN KAISHA, LTD; NIPPON YUSEN KAISHA; SHOWA SHIPPING CO., LTD; YAMASHITA-SHINNIHON STEAMSHIP CO.,LTD.; Plaintiffs, v. COUNTY OF LOS ANGELES, CITY OF LOS ANGELES, Defendants.	CASE NUMBER CERTIFICATE OF ASSIGNMENT OR TRANSFER

A civil action or proceeding presented for filing in a district other than the Central District must be accompanied by this certificate. An action for personal injury, wrongful death or damage to property presented for filing in the Central District must be accompanied by this certificate. If the ground is the residence of a party, his name and residence shall be stated.

[X] The undersigned declares that the above entitled matter is filed for proceedings in the South District of the Superior Court under Rule 2, Section 3 of this court for the checked reason:

		Nature of Action	Ground
☐	1	Abandonment	Petitioner resides within the district
☐	2	Adoption	Petitioner resides within the district
☐	3	Conservator	Petitioner or conservatee resides within the district
☐	4	Contract	Performance in the district is expressly provided for
☐	5	Equity	The cause of action arose within the district
☐	6	Eminent Domain	The property is located within the district
☐	7	Family Law	Plaintiff, defendant, petitioner or respondent resides within the district
☐	8	Forceable Entry	The property is located within the district
☐	9	Guardianship	Petitioner or ward resides within the district
☐	10	Habeas Corpus	No action pending, the person is held within the district
☐	11	Mandate*	The defendant functions wholly within the district
☐	12	Name Change	The petitioner resides within the district
☐	13	Personal Property	The property is located within the district
☐	14	Probate	Decedent resided or petitioner resides within the district
☐	15	Prohibition*	The defendant functions wholly within the district
☐	16	Review*	The defendant functions wholly within the district
☐	17	Small Claims Appeal	The lower court is located within the district
☐	18	Title to Real Property	The property is located within the district
☐	19	TORT	The cause of action arose within the district
☐	20	TORT*	The cause of action arose outside of this county
☐	21	Transferred Action	The lower court is located within the district
☐	22	Unlawful Detainer	The property is located within the district
	23	Refund of Taxes	The property is located within the district.

The residence of the petitioner, respondent, deceased, conservatee, ward, plaintiff, or defendant Plaintiffs (Name) is San Pedro, Wilmington, Long Beach (Address)

☐ Under Rule 2, Section 6, I allege that for the convenience of witnesses and to promote the ends of justice the matter should be transferred to the South District.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on February 1, 1972 at Long Beach, California.

L. E. Mattei
(Signature of Attorney)

*Prerogative writs concerning a court of inferior jurisdiction and Tort Actions arising outside of the county may be filed in Central District only.

Complaint for Recovery of Taxes.

Superior Court of the State of California, for the County of Los Angeles.

Japan Line Ltd.; Mitsui O.S.K. Lines, Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha Line; Showa Shipping Co., Ltd.; Yamashita-Shinnihon Steamship Co. Ltd., foreign corporations; Lilly Shipping Agencies, a corporation, Plaintiffs, vs. County of Los Angeles and City of Los Angeles, Defendants. No. SOC 30557.

Original Filed: Feb. 15, 1973.

Plaintiffs allege:

I

Plaintiffs are and at all times hereinafter mentioned were, corporations duly organized and existing under the laws of Japan or elsewhere, and excepting LILLY SHIPPING AGENCIES (hereafter "LILLY") were engaged primarily in the operation of steamships and containerships in the carriage of cargo in foreign commerce. LILLY was and is the agent of and for YAMASHITA-SHINNIHON STEAMSHIP CO., Ltd.

II

Defendant COUNTY OF LOS ANGELES is, and at all times hereinafter mentioned was, a political subdivision of the State of California.

III

Defendant CITY OF LOS ANGELES is, and at all times hereinafter mentioned was, a municipal corporation and political subdivision of the State of California. At all times mentioned herein, defendant COUNTY OF LOS ANGELES acted in part for defendant CITY OF LOS ANGELES in levying and collecting the taxes which are the subject matter of this Complaint.

IV

On March 1, 1972, at 12:01 A.M., plaintiffs were the owners and lessees of certain cargo containers located in the City of Los Angeles. Said containers are an integral part of the movement of goods in foreign commerce by Japanese plaintiff's vessels, which are registered under the laws of Japan, where each of Japanese plaintiffs has its corporate and commercial domicile and the home port of its vessels and containers. At all times when said containers are physically present in the City of Los Angeles, they are so located only for short periods of time sufficient for the delivery and loading of the international cargo shipments contained therein.

V

The Assessor of the County of Los Angeles assessed against the subject cargo containers, and the Tax Collector of the County of Los Angeles levied taxes thereon as follows:

Plaintiff-Taxpayer	Appraisal	Assessment	Tax Levied
Japan Line, Ltd.	$1,696,900	$424,225	$54,297.83
Kawasaki Kisen Kaisha, Ltd.	1,768,280	442,070	56,581.86
Mitsui O.S.K. Lines, Ltd.	1,342,200	335,550	42,948.05
Nippon Yusen Kaisha Line	1,173,920	293,480	37,563.38
Showa Shipping Co., Ltd.	564,340	141,085	18,057.89
Yamashita-Shinnihon Steamship Co., Ltd. & Lilly Shipping Agencies	731,040	182,760	23,392.00

Between June 19, 1972, and August 31, 1972, plaintiffs herein, excepting YAMASHITA - SHINNIHON STEAMSHIP CO., LTD., paid, under written protest, the amount of tax respectively levied against each of them. The grounds of the protest were set out in an exhibit accompanying the payment of the tax, which

grounds are set forth in Exhibit "A" attached hereto and incorporated herein. On or about June 19, 1972 LILLY, as agent for and on behalf of YAMASHITA-SHINNIHON STEAMSHIP CO., LTD. paid the amount of tax levied against YAMASHITA-SHINNIHON STEAMSHIP CO., LTD. and thereafter, on or about February 5, 1973 LILLY and YAMASHITA-SHINNIHON STEAMSHIP CO., LTD. duly filed claim for refund (which has been denied) the grounds for which are likewise set forth in Exhibit "A" attached hereto and incorporated herein.

VI

At 12:01 A.M., on March 1, 1972, none of the cargo containers physically present within the City of Los Angeles had acquired taxable situs in the County or City of Los Angeles. The subject containers were and are constantly committed to and engaged in the process of importation to and exportation from the United States and are integral to the transportation of goods aboard Japanese plaintiff's vessels exclusively in foreign commerce. As instrumentalities of foreign commerce, and due to their integral participation and exclusive use in foreign commerce and foreign movements of cargo, the containers were subject to taxation exclusively in Japan. Therefore, the said taxes were unlawfully levied and collected in that the subject containers were exempt from taxation by United States Constitution Article I, Sections 8, 9 and 10, Amendment V and Amendment XIV; the Treaty of Friendship, Commerce and Navigation between the United States and Japan (especially Article XI and XVII) and, pursuant to the most-favored-nation provisions of that Treaty, (Article VI, Section 4 and Article XI, Section 3) under treaties with other nations; California Consti-

tution Article 13, Sections 1 and 4; and Revenue and Taxation Code Section 201. The levying and collecting of the subject taxes subjected plaintiffs and the containers to double taxation, as between California and Japan, in violation of Revenue and Taxation Code Section 102. As movable property without a "normal place of return" between movements, the containers have situs exclusively at Japanese plaintiff's principal place of business, Japan. (See, e.g., 18 California Administrative Code 205.)

VII

No refund of said taxes, or any part thereof, has been made to plaintiffs.

WHEREFORE, plaintiffs pray for judgment against defendants in the respective amounts of taxes levied and paid as set forth in Paragraph V of this Complaint, together with interest thereon from the date of payment at the maximum rate of interest, which rate is no less than 8½% per annum from the date of payment, for costs of suit, and for such other and further relief as may be just and proper.

DATED: February 14, 1973

GRAHAM & JAMES
By /s/ Reed M. Williams
Reed M. Williams
Attorneys for Plaintiffs

DECLARATION

State of California, County of Los Angeles—ss.

I, the undersigned, say:

I am a member of the firm of GRAHAM & JAMES, attorneys for the Plaintiffs herein; said Plaintiffs are

corporations, all of whose officers are absent from the County of Los Angeles, California, where said attorneys have their officers, and that I make this verification for and on behalf of said party for that reason; the foregoing Complaint For Recovery of Taxes is true of my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 14, 1973, at Los Angeles, California.

/s/ Reed M. Williams
REED M. WILLIAMS

EXHIBIT "A"

1) The subject containers as "movable property" have not acquired situs in Los Angeles County under the standards of Rule 205 of the California Administrative Code, Title 18; and, pursuant to that Rule, have situs only at the principal place of business of the taxpayer, Japan.

2) The subject containers are integral to taxpayer's movement of cargo in foreign commerce.

a) They are instrumentalities of foreign commerce and are taxable only in taxpayer's domicile, Japan, under the "home port" doctrine and under the "commerce clause" of the United States Constitution, Article I, Section 8, Clause 3; Article XIII, Section 1, of the California Constitution; and Revenue and Taxation Code, Section 201, and the due process clauses of the United States Constitution Amendments V and XIV.

b) The containers are constantly engaged in the process of importation to and exporation from the United States, and, as such, are exempt from taxation under the "import-export" and "commerce" clauses (Article I, Sections 10 and 8 (3)) of he United States Constitution and under Article XIII, Section 1, of the California Constitution, and under Revenue and Taxation Code, Section 201, and the due process clauses, Amendments V and XIV to the United States Constitution.

3) The containers are integral parts of the vessels which transport the cargo and as such are exempt under Article XIII, Section 4, of the California Constitution, and Section 201 of the Revenue and Taxation Code.

4) These containers are exempt from taxation under the Treaty of Friendship, Commerce and Navigation between the United States and Japan and, pursuant to the most-favored-nation provision of that treaty, under treaties with other nations.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

JAPAN LINE, LTD.; MITSUI O.S.K. LINES, LTD; KAWASAKI KISEN KAISHA, LTD.; NIPPON YUSEN KAISHA LINE; SHOWA SHIPPING CO., LTD; YAMASHITA-SHINNIHON STEAMSHIP CO., LTD.; Plaintiffs, v. COUNTY OF LOS ANGELES, CITY et al.	CASE NUMBER CERTIFICATE OF ASSIGNMENT OR TRANSFER

A civil action or proceeding presented for filing in a district other than the Central District must be accompanied by this certificate. An action for personal injury, wrongful death or damage to property presented for filing in the Central District must be accompanied by this certificate. If the ground is the residence of a party, his name and residence shall be stated.

[X] The undersigned declares that the above entitled matter is filed for proceedings in the South District of the Superior Court under Rule 2, Section 3 of this court for the checked reason:

		Nature of Action	Ground
☐	1	Abandonment	Petitioner resides within the district
☐	2	Adoption	Petitioner resides within the district
☐	3	Conservator	Petitioner or conservatee resides within the district
☐	4	Contract	Performance in the district is expressly provided for
☐	5	Equity	The cause of action arose within the district
☐	6	Eminent Domain	The property is located within the district
☐	7	Family Law	Plaintiff, defendant, petitioner or respondent resides within the district
☐	8	Forceable Entry	The property is located within the district
☐	9	Guardianship	Petitioner or ward resides within the district
☐	10	Habeas Corpus	No action pending, the person is held within the district
☐	11	Mandate*	The defendant functions wholly within the district
☐	12	Name Change	The petitioner resides within the district
☐	13	Personal Property	The property is located within the district
☐	14	Probate	Decedent resided or petitioner resides within the district
☐	15	Prohibition*	The defendant functions wholly within the district
☐	16	Review*	The defendant functions wholly within the district
☐	17	Small Claims Appeal	The lower court is located within the district
☐	18	Title to Real Property	The property is located within the district
☐	19	**TORT**	The property is located within the district
☐	20	**TORT***	The cause of action arose within the district
☐	21	Transferred Action	The cause of action arose outside of this county
☐	22	Unlawful Detainer	The lower court is located within the district
			The property is located within the district
	23	Refund of Taxes	The property is located within the district.

The residence of the petitioner, respondent, deceased, conservatee, ward, plaintiff, or defendant is .... (Address) .... (Name)

☐ Under Rule 2, Section 6, I allege that for the convenience of witnesses and to promote the ends of justice the matter should be transferred to the South District.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on February 14, 1973 at Long Beach, California.

[signature]

(Signature of Attorney)

*Prerogative writs concerning ...

Intended Decision.

Superior Court of the State of California, for the County of Los Angeles.

Japan Line, Ltd., et al., Plaintiffs, vs. County of Los Angeles, et al., Defendants. No. SO C 25617. (Consolidated for all purposes with: SO C 27593, and SO C 30557.)

Japan Line, Ltd., et al., Plaintiffs, vs. County of Los Angeles, et al., Defendants. No. SO C 27593.

Japan Line, Ltd., et al., Plaintiffs, vs. County of Los Angeles, et al., Defendants. No. SO C 30557.

The Court has before it three cases which were consolidated. They all have identical facts and parties, except that the periods in which an ad velorum tax was levied are different, to wit:

Case No. SO C 25617—March 2, 1972
Case No. SO C 27593—August 31, 1971
Case No. SO C 30557—August 31, 1972

Briefly, Los Angeles County has levied a property tax on cargo containers used by the five Japanese shipping lines who are parties plaintiff, based on the average number of containers constantly in Los Angeles County. These containers are owned and controlled by Japanese based concerns and only come into this country for the purpose of bringing in cargoes or shipping them out in foreign commerce. There is no interstate or intrastate use. The taxes were paid for the periods indicated under protest and this suit to recover followed.

Another case identical in nature has been previously tried by this Court and decided for the plaintiff (SO C 23482). This decision was not appealed, but since

that time the Court of Appeal has decided *Sea-Land vs. Alameda County*, (District 1, Div. 2) 36 C.A.(2) 825, and the defendant contends that that decision is controlling and at least calls for a reconsideration of the whole question.

The parties have stipulated to the facts and to the taxes paid each year, which exhibit is incorporated into this Intended Decision and made a part hereof as Exhibit A.

In SO C 23482, the Court found that the cargo containers were instrumentalities of foreign commerce and were a part of the ship. The *Sea-Land* case has taken the position that they are only instrumentalities of commerce to the extent that they provide a means for transferring cargo from one form of transportation to another (at page 832). This would belie the idea that they are an extension of the ship. The distinction makes no difference and as "instrumentalities of foreign commerce" they are still afforded the benefits of the "Home Port" rule.

Sea-Land was concerned with a domestic corporation (New Jersey) engaged in both foreign, inter and intrastate commerce and here lies the difference. There was no consideration of the "Home Port" rule as that was not involved; nor was any thought given to foreign treaties so well discussed in *Scandinavian Airlines vs. County of Los Angeles*, 56 Cal.(2) 11, cert. denied, 368 U.S. 899.

This Court is of the opinion that nothing has changed since the last decision on this matter, and therefore, adopts that part of the previous decision relating to Federal law, Home Port rule, and treaties. It is as follows:

Our Supreme Court in the *Scandinavian Airlines* system case made it clear that "Foreign Commerce" is a federal matter exclusively. It further stated that if the tax is repugnant to the treaty it cannot stand. Two treaties were considered here: The "General Agreement on Tariffs and Trade" and the "Treaty of Friendship, Commerce and Navigation Between the United States and Japan".

In the previous decision by this Court it was remarked in the Intended Decision that the Court didn't think the "Most Favored Nation" rule was applicable and that it based its ruling on the Treaty of Friendship, Commerce and Navigation Between the United States and Japan (1953), and the particular Article XI therein which provides that parties engaged in trade within the territory of the other party shall not be subject to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activties or any other object more burdensome than those borne by nationals of the host country.

A tax levied on the containers by Los Angeles County would violate this section, because it was stipulated that plaintiffs pay a tax in Japan. There is no way to prorate the same, as we do in interstate commerce. The Japanese would be paying a double tax, while a domestic company would, by reason of proration, be paying only one tax.

In addition to this, the Court now feels "The Most Favored Nation Rule" is likewise applicable, because we are favoring our nationals (by reason of only one total tax) as against our foreign parties.

It is also to be noted that U.S. companies pay no tax on containers in Japan (by stipulation). To

allow the tax levy would result in unequal treatment of our foreign parties.

To consider proration of taxes with foreign entitites is not practical. There is no tribunal that can adjudicate these rights unless it be the International Court and to invoke its services jurisdiction must be consented to by all parties. For this reason, our Federal Courts have consistently held that vessels which are instrumentalities of foreign commerce and engaged in foreign commerce can be taxed in their home port only.

Whether we consider the containers as a part of the ship or not, they do have a home port (Japan). They are engaged exclusively in foreign commerce and they are taxed in their home port so it presents no problem to extend to them the benefits of the "Home Port" rule.

The plaintiffs have conceded that certain generator sets were included in the taxes levied and that the tax on those was legal. The Court has, therefore, deducted stipulated amounts from the "Schedule of Payments" to reflect the true amounts in issue in this case.

Judgment will be for plaintiffs against defendants in amounts indicated in Exhibit A, plus interest at 7% per annum on the amounts indicated on Exhibit A under the particular plaintiff's name from the date of payment so indicated, excluding from such sums the portion thereof that was paid on generator sets.

Plaintiff will prepare judgment.

Dated: March 14, 1974.

HAMPTON HUTTON
JUDGE OF THE SUPERIOR COURT

SCHEDULE OF PAYMENT DATES

Tax Year	Date of Payment	J Line	K Line	M-O Line	NYK	Showa	Y-S Line
70-71	3-2-71	$ 20,512.32	$ 33,519.55	$ 33,543.68	$ 37,243.95	$ 15.954.03	$ 22,094.22
71-72	8-31-71	26,617.46	29,389.52	36,938.60	36,473.89	16,628.77	25,111.49
72-73	8-31-72	54,297.83	56,581.86	42,948.05	37,563.38	18,507.89	23,392.00
		$101,427.61	$119,490.93	$113,430.33	$111,281.22	$ 50,640.96	$ 70,597.71
	LESS	$ 794.76	$ 1,874.49	$ 2,175.08	$ 1,106.18		$ 1,181.32
		$100,632.85	$117,616.44	$111,255.25	$110,175.04		$ 69,416.39

Agreed Statement in Lieu of Clerk's and Reporter's Transcripts.

In the Court of Appeal of the State of California, Second Appellate District.

Japan Line, Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Showa Shipping Co., Ltd.; Yamashita-Shinnihon Steamship Co., Ltd.; foreign corporations, Plaintiffs and Respondents, vs. County of Los Angeles and City of Los Angeles, Defendants and Appellants. Nos. SO C-25617, SO C-27593, SO C-30557.

Original Filed July 21, 1975.

Appeal from the Superior Court, Los Angeles County, Honorable Hampton Hutton, Judge.

Appearances:

GRAHAM and JAMES, 100 Oceangate, Suite 515, Long Beach, California 90802, Area Code (213) 435-4435, Counsel for Respondents.

JOHN H. LARSON, County Counsel, JAMES DEXTER CLARK, Deputy County Counsel, 648 Hall of Administration, Los Angeles, California 90012, Area Code (213) 974-1889, Counsel for Appellants.

—

AGREED STATEMENT IN LIEU

OF

CLERK'S AND REPORTER'S TRANSCRIPTS

—

Agreed Statement in Lieu of Clerk's and Reporter's Transcripts.

Superior Court of the State of California for the County of Los Angeles.

Japan Line, Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Showa Shipping Co., Ltd.; Yamashita-Shinnihon Steamship Co., Ltd.; foreign corporations, Plaintiffs and Respondents, vs. County of Los Angeles and City of Los Angeles, Defendants and Appellants. Nos. SO C-25617, SO C-27593, SO C-30557.

Appellants herein submit and file with the Clerk, the Agreed Statement in Lieu of Clerk's and Reporter's Transcripts signed by the parties herein under California Rules of Court, Rule 6.

I

A copy of the Judgment is attached hereto.

II

A copy of the Notice of Appeal is attached hereto and was filed on December 12, 1974.

III

The nature of the controversy is whether cargo shipping containers, owned by Respondents, Japanese domiciliaries, and subject to and in fact taxed in Japan, and used exclusively for the transportation of cargo for hire in foreign commerce, may be taxed by Appellants, County and City, on an ad valorem basis.

IV

This is an appeal from the judgment of the Superior Court of Los Angeles County, South District, entered

on Plaintiffs' (Respondents herein) Complaints on October 15, 1974, in the amount of $559,736.66, plus interest as provided by Revenue and Taxation Code §5141, and against Defendants (Appellants herein). Original jurisdiction was vested in the Superior Court by California Constitution Article IV, Section V. On December 12, 1974, within sixty (60) days of entry of judgment, notice of appeal was filed by Appellants. A copy of said notice is attached hereto. Jurisdiction is conferred on this Court by California Constitution Article VI, 4b, (10 and 11).

V

The questions involved herein arose as the result of a levy of personal property tax on the Respondents' cargo shipping containers. The Appellants answered the Complaints, denying that the tax was unlawful. All three cases involved herein, covering a period of three years, were consolidated for all purposes. The Superior Court held that the tax was unlawful. Respondents paid the taxes under protest on the grounds set forth in their letter of protest which is attached hereto as Exhibit "A" and made a part hereof as if fully set forth herein. Complaints for recovery of taxes based on the same grounds were filed by Respondents.

VI

The facts which are stipulated on appeal are as follows:

1. There were present in Los Angeles County on lien dates 1970, 1971 and 1972 an unspecified number of cargo shipping containers owned and controlled by Plaintiffs and having the market values as set forth in the Findings of Fact.

2. Said containers were not concealed and their presence was open and obvious. Taxes on said cargo shipping containers were timely paid, under protest, as set forth in the Findings of Fact.

3. Said amounts are the correct amounts of the tax, assuming that all containers present on the lien date were subject to tax based on their total fair market values.

4. Said amounts of taxes were paid by Plaintiffs within six months prior to the commencement of the actions herein.

5. Said containers are used exclusively for the transportation of cargo for hire in foreign commerce.

6. Said containers are never used for intrastate or interstate transportation of cargo except as continuations of international voyages.

7. The interstate or intrastate movement of empty containers are solely for the purpose of picking up cargo to be carried in foreign commerce, or returning the containers to ports (principally Los Angeles), all containers thereafter moving by Plaintiffs' vessels to foreign countries.

8. All of the loaded containers physically present within Los Angeles County on the lien dates were loaded with cargo either inbound from or outbound to foreign ports.

9. All empty containers physically present within Los Angeles County on the lien dates were awaiting loading of cargo to be carried on Plaintiffs' vessels in foreign commerce, or carriage to other ports (principally in Japan) by Plaintiffs' vessels.

10. No container has a usual place of return in California or the United States between uses.

11. Each container is in constant transit save for repair time and time awaiting new cargo.

12. None of the containers present in Los Angeles County on lien dates 1970, 1971 or 1972 had been in California for as much as six months during the twelve months immediately preceding said lien dates.

13. The average stay of any of the containers in California at any one time is less than three weeks.

14. No container is permanently situated in California or scheduled, on departure from Los Angeles, to return to Los Angeles or any other place in California or the United States.

15. Plaintiffs are incorporated under the laws of Japan, and have their principal places of business and commercial domiciles in Japan.

16. All of Plaintiffs' vessels, on which the subject containers are carried, have their home port in and are registered in Japan, and are used exclusively in foreign commerce.

17. None of Plaintiffs' vessels on which the subject containers are carried is registered in the United States.

18. All of Plaintiffs' vessels on which the subject containers are carried are specifically designed and constructed to accommodate the subject containers, and carry only cargo in such containers.

19. In general, all containers carried by Plaintiffs' vessels as aforesaid, including the subject containers, upon arriving from Japan are discharged from said vessels in the Port of Los Angeles and either (1) transported by truck or rail to the ultimate inland destination of the imported cargo contained therein, or (2) unloaded in Los Angeles Harbor.

(a) Those containers transported to such inland destinations are unloaded at such destinations and are then either (1) reloaded with export cargo at an inland location and transported to one of Plaintiffs' vessels by truck or rail for export, or (2) returned empty by truck or rail to Los Angeles Harbor for export or for reloading for export, all containers thereafter moving by said vessels to Japan.

20. The inland (outside Los Angeles Harbor) destinations and origins of cargo carried in said containers include locations in other states, as well as in California.

21. An outbound container may leave the United States through any port, and need not leave through the port through which it entered the United States.

22. All containers of Plaintiffs are subject to property tax and are, in fact, taxed in Japan.

23. Plaintiffs have not received a refund of said taxes.

24. Said taxes were paid to and received by Defendants as set forth in the Findings of Fact.

25. During all periods referred to in Plaintiffs' complaints, cargo shipping containers owned or controlled by steamship companies domiciled in the United States, which containers from time to time were located in Japan while engaged in receiving and delivering cargo and awaiting shipment by vessel, were not subject to property taxation in Japan, and were not taxed in Japan.

26. The number of containers physically present in Los Angeles County on the lien dates 1970, 1971 and 1972 is fairly representative of the number of containers present in Los Angeles County on other dates throughout the tax year.

VII

The Court rendered Findings of Fact and conclusions of law, which are as follows:

FINDINGS OF FACT

1. On the first day of March 1970, 1971 and 1972, there were present in the City of Los Angeles and the County of Los Angeles certain cargo shipping containers owned and controlled by Plaintiffs, the fair market values and assessed values being as follows:

Plaintiff	Fair Market Values 1970	1971	1972
Japan Line, Ltd.	$ 765,000	$ 885,550	$1,696,900
Kawasaki Kisen Kaisha, Ltd	1,250,100	977,720	1,768,280
Mitsui O.S.K. Lines, Ltd	1,251,000	1,228,860	1,342,200
Nippon Yusen Kaisha	1,389,000	1,213,400	1,173,920
Showa Shipping Co.	595,000	553,200	564,340
Yamashita-Shinnihon Steamship Co.	824,000	835,400	731,040
	Assessed Values		
Japan Line, Ltd.	$191,250	$221,375	$424,225
Kawasaki Kisen Kaisha, Ltd.	312,525	244,430	442,070
Mitsui O.S.K. Lines, Ltd.	312,750	307,215	335,550
Nippon Yusen Kaisha	347,250	303,350	293,480
Showa Shipping Co.	148,750	138,300	141,085
Yamashita-Shinnihon Steamship Co.	206,000	208,850	182,760

2. Defendants assessed and levied taxes as follows against Plaintiffs with respect to said containers. The amounts of said taxes are properly calculated as follows:

Plaintiff	1970	1971	1972
Japan Line, Ltd.	$20,512.32	$25,822.70	$54,297.83
Kawasaki Kisen Kaisha, Ltd.	33,519.55	27,515.03	56,581.86
Mitsui O.S.K. Lines, Ltd.	33,543.68	34,763.52	42,948.05
Nippon Yusen Kaisha	37,243.95	35,367.71	37,563.38
Showa Shipping Co.	15,954.03	16,628.77	18,057.89
Yamashita-Shinnihon Steamship Co.	22,094.22	23,930.17	23,392.00

3. Plaintiffs timely paid said taxes, under protest, as follows:

Tax Year	*Date of Payment*
1970-1971	March 2, 1971
1971-1972	August 31, 1971
1972-1973	August 31, 1972

4. Plaintiffs' suits for refund of said taxes were filed within six months from the date of payment of said taxes.

5. No refund of said taxes has been made.

6. Plaintiffs are incorporated under the laws of Japan, and have their principal places of business and commercial domiciles in Japan.

7. All of Plaintiffs' vessels, on which the said containers are carried, have their home port in and are registered in Japan, and are used exclusively in foreign commerce.

8. All of Plaintiffs' vessels on which the said containers are carried are specifically designed and constructed to accommodate the said containers, and carry cargo only in said containers.

9. Said containers have their home port in Japan, and are used constantly and exclusively for the transportation of cargo for hire in foreign commerce.

10. No container has a usual place of return in California or the United States between uses.

11. Each container is in constant transit save for repair time, and time awaiting the loading of cargo.

12. None of the containers present in Los Angeles County on the first day of March 1970, 1971, or 1972 had been in California for as much as six months during the twelve months immediately preceding said dates.

13. The average stay of any of the containers in California at any one time is less than three weeks.

14. All containers of Plaintiffs are subject to property tax, and are, in fact, taxed in Japan.

15. During all periods referred to in Plaintiffs' complaints, those cargo shipping containers owned or controlled by steamship companies domiciled in the United States, and which from time to time were located in Japan while engaged in receiving and delivering cargo (being transported in foreign commerce) and awaiting shipment by vessel, were not subject to property taxation in Japan, and were not taxed in Japan.

16. The number of containers physically present in Los Angeles County on the lien dates 1970, 1971 and 1972 is fairly representative of the number of containers present in Los Angeles County on other dates throughout the tax year.

17. Any movements, or periods of non-movement of any of said containers while in the United States (whether said containers are empty or filled with car-

go), are incidental to and inseparable from the use of said containers in the transportation of cargo in foreign commerce, any such movements or periods of non-movement being essential to and solely for the efficiency and economic utilization of the containers as instrumentalities of foreign commerce.

CONCLUSIONS OF LAW

1. Said containers, as utilized by Plaintiffs at all times relevant hereto, are instrumentalities of foreign commerce.

2. That said containers are exempt from taxation by Defendants.

3. That Defendants unlawfully collected those taxes from Plaintiffs as set forth in Findings of Fact No. 2.

4. That Plaintiffs are entitled to a refund of said taxes.

5. That Plaintiffs have judgment against Defendants for the following sums:

Plaintiff	*Sum*
Japan Line, Ltd.	$100,632.85
Kawasaki Kisen Kaisha, Ltd.	117,616.44
Mitsui O.S.K. Lines, Ltd.	111,255.25
Nippon Yusen Kaisha	110,175.04
Showa Shipping Co.	50,640.69
Yamashita-Shinnihon Steamship Co.	69,416.39

together with interest pursuant to California Revenue and Taxation Code §5141 computed from the dates and on the amounts of payment as follows, until entry of judgment:

Plaintiff	Mar. 2, '71	Aug. 31, '71	Aug. 31, '71
Japan Line, Ltd.	$20,512.32	$25,822.70	$54,297.83
Kawasaki Kisen Kaisha, Ltd.	33,519.55	27,515.03	56,581.86
Mitsui O.S.K. Lines, Ltd.	33,543.68	34,763.52	42,948.05
Nippon Yusen Kaisha	37,243.95	33,367.71	37,563.38
Showa-Shipping Co.	15,954.03	16,628.77	18,057.89
Yamashita-Shinnihon Steamship Co.	22,094.22	22,930.17	23,392.00

together with costs of suit herein.

GRAHAM & JAMES
By /s/ Reed Williams
Reed Williams
Attorneys for Plaintiffs
and Respondents

JOHN H. LARSON
County Counsel
By /s/ James Dexter Clark
James Dexter Clark
Attorneys for Defendants
and Appellants

EXHIBIT A

1) The subject containers as "movable property" have not acquired situs in Los Angeles County under the standards of Rule 205 of the California Administrative Code, Title 18; and, pursuant to that Rule, have situs only at the principal place of business of the taxpayer, Japan.

2) The subject containers are integral to taxpayer's movement of cargo in foreign commerce.

a) They are instrumentalities of foreign commerce and are taxable only in taxpayer's domicile, Japan, under the "home port" doctrine and under

the "commerce clause" of the United States Constitution, Article I, Section 8, Clause 3; Article XIII, Section 1, of the California Constitution; and Revenue and Taxation Code, Section 201, and the due process clauses of the United States Constitution Amendments V and XIV.

b) The containers are constantly engaged in the process of importation to and exportation from the United States, and, as such, are exempt from taxation under the "import-export" and "commerce" clauses (Article I, Sections 10 and 8 (3) of the United States Constitution, and under Article XIII, Section 1, of the California Constitution, and under Revenue and Taxation Code, Section 201, and the due process clauses, Amendments V and XIV to the United States Constitution.

3) The containers are integral parts of the vessels which transport the cargo and as such are exempt under Article XIII, Section 4, of the California Constitution, and Section 201 of the Revenue and Taxation Code.

4) These containers are exempt from taxation under the Treaty of Friendship, Commerce and Navigation between the United States and Japan and, pursuant to the most-favored-nation provision of that treaty, under treaties with other nations.

5) The presence of these containers in Los Angeles County was well known to the general public and the Assessor during the regular assessment period in 1971 and the escaped assessment is, therefore, void as not made "on discovery" as required by Revneue and Taxation Code Section 531.

Judgment.

Superior Court of the State of California, for the County of Los Angeles.

Japan Line, Ltd., et al., Plaintiffs, v. County of Los Angeles and City of Los Angeles, Defendants. No. SO C 25617, SO C 27593, SO C 30557.

The above entitled causes came on regularly for trial on February 14, 1974. GRAHAM & JAMES and Reed M. Williams appeared as attorneys for plaintiffs. John H. Larson, County Counsel, and James Dexter Clark, Deputy County Counsel, appeared as attorneys for defendants. A jury trial having been waived, and the Court having heard the testimony and having heard and considered the evidence and the matters admitted by the parties, and the Court being fully advised in the premises and having filed its findings of fact and conclusions of law, and having directed that judgment be entered in accordance therewith, now therefore by reason of the law and findings aforesaid, and good cause appearing:

IT IS ORDERED, ADJUDGED AND DECREED that plaintiffs have judgment against defendants in the following principal amounts, together with interest thereon, pursuant to California Revenue and Taxation Code §5141 from the dates specified hereafter to the date of entry of judgment;

JAPAN LINE, LTD.	
Principal	$100,632.85
Interest	
($4,482.10 ($20,512.32 from 3-2-71)	
($3,877.50 ($25,822.70 from 8-31-71)	
($8,153.27 ($54,297.83 from 8-31-72)	
	$ 16,512.87
TOTAL	$117,145.72

KAWASAKI KISEN KAISHA, LTD.

Principal		$117,616.44
Interest		
($7,324.27 ($33,519.55 from 3-2-71)		
($4,131.61 ($27,515.03 from 8-31-71)		
($8,496.25 ($56,581.86 from 8-31-72)		
	$ 19,952.13	
TOTAL		$137,568.57

MITSUI O.S.K. LINES, LTD.

Principal		$111,255.25
Interest		
($7,329.55 ($33,543.68 from 3-2-71)		
($5,220.03 ($34,763.52 from 8-31-71)		
($6,449.02 ($42,948.05 from 8-31-72)		
	$ 18,998.60	
TOTAL		$130,253.85

NIPPON YUSEN KAISHA

Principal		$110,175.04
Interest		
($8,138.09 ($37,243.95 from 3-2-71)		
($5,310.76 ($35,367.71 from 8-31-71)		
($5,640.45 ($37,563.38 from 8-31-72)		
	$ 19,089.30	
TOTAL		$129,264.34

SHOWA SHIPPING CO., LTD.

Principal		$ 50,640.69
Interest		
($3,486.08 ($15,954.03 from 3-2-71)		
($2,496.95 ($16,628.77 from 8-31-71)		
($2,711.54 ($18,057.89 from 8-31-72)		
	$ 8,694.57	
TOTAL		$ 59,335.26

YAMASHITA SHINNIHON STEAMSHIP CO., LTD.

Principal		$ 69,416.39
Interest		
($4,827.76 ($22,094.22 from 3-2-71)		
($3,593.31 ($23,930.17 from 8-31-71)		
($3,512.50 ($23,392.00 from 8-31-72)		
	$ 11,933.57	
TOTAL		$ 81,349.96

together with costs of suit herein taxed in the amount of $.....

Dated: Oct. 15, 1974.

HAMPTON HUTTON
JUDGE OF THE SUPERIOR COURT

Notice of Appeal.

Superior Court of the State of California, for the County of Los Angeles.

Japan Line, Ltd., et al., Plaintiffs, vs. County of Los Angeles and City of Los Angeles, Defendants. Nos.: SO C 25617, SO C 27593, SO C 30557.

NOTICE IS HEREBY GIVEN that the COUNTY OF LOS ANGELES and CITY OF LOS ANGELES, defendants, hereby appeal to the Court of Appeal of the State of California, Second District, Division ..... from the Judgment rendered on October 15, 1974, and entered in Minute Book, Volume SO 225, Page 085, on October 15, 1974, in favor of Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Showa Shipping Co., Ltd., and Yamashita Shinnihon Steamship Co., Ltd., plaintiffs.

DATED: December 12, 1974.

JOHN H. LARSON
County Counsel
By /s/ James Dexter Clark
JAMES DEXTER CLARK
Deputy County Counsel
Attorneys for Defendants

DECLARATION OF SERVICE BY MAIL

State of California, County of Los Angeles

Doris Ross states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 648 Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 12th day of December, 1974, I served the attached NOTICE OF APPEAL upon Plaintiff's Attorneys by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box in Los Angeles, California, addressed as follows: Reed Williams, Esq., Graham & James, 100 Oceangate, Long Beach, CA 90802 and that the person on whom said service was made has his office at a place where there is a delivery service by United States mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Los Angeles, California. Dated: December 12, 1974.

/s/ Doris Ross

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Three.

Japan Lines, Ltd., et al., Plaintiffs and Respondents, v. County of Los Angeles and City of Los Angeles, Defendants and Appellants. 2d Civ. No. 47134. Sup. Ct. Nos. SOC 25617, SOC 27593, SOC 30557.

Filed: Aug. 27, 1976.

APPEAL from a judgment of the Superior Court of Los Angeles County. Hampton Hutton, Judge. Reversed.

John H. Larson, County Counsel, James Dexter Clark, Deputy County Counsel, for Defendants and Appellants.

Graham & James, and Reed M. Williams, for Plaintiffs and Respondents.

The sole question presented by this appeal upon an agreed statement from a tax refund judgment is whether appellants, the County and City of Los Angeles, may impose an apportioned ad valorem tax upon cargo shipping containers, taxed in Japan, used here essentially exclusively in foreign commerce and owned and controlled by Japanese taxpayers. These taxpayers are six shipping lines incorporated under the laws of Japan which have their principal places of business and commercial domiciles there.

FACTS

The facts as stipulated between the parties disclose that the containers at issue are in constant transit save for repair time and time awaiting new cargo. They are only intermittently physically present within

the jurisdictions of appellants for an average stay of less than three weeks. They are used exclusively for the transportation of cargo for hire in foreign commerce. They are either full or empty. The full containers are loaded with cargo inbound from or outbound to foreign ports. The empty containers are moved intrastate within California and interstate from California solely to pick up cargo to be carried in foreign commerce or to return the containers themselves to ports (principally Los Angeles) for placement aboard the taxpayers' outbound vessels. The containers are never used for either intrastate or interstate transportation of cargo except in continuation of international voyages.

The Taxpayers' Contentions

Since the judgment under appeal was rendered, our Supreme Court decided unanimously in the case of *Sea-Land Service, Inc. v. County of Alameda,* 12 Cal.3d 772, 775-776, that a California county may tax such containers, under circumstances of use essentially identical to those before us, where the containers were used mainly in foreign commerce[1] but were owned by a shipping company incorporated and commercially domiciled within this country.

The taxpayers contend that the *Sea-Land* decision is not dispositive of this case because, there, Sea-Land conceded that its containers were subject to local taxation within the United States. Its position was that such taxation must be done exclusively at the home port of its vessels. (*Sea-Land, supra,* at 781, 786.)

[1]The interstate commerce therein involved was via international waters between California and the east coast of the United States. (*Sea-Land, supra,* at 776.) The court made no distinction between the containers used in foreign commerce and those used in intercoastal commerce.

Here, the home ports of the taxpayers' vessels, which are specifically designed to carry the containers at issue, are in Japan. The taxpayers' vessels are likewise registered there rather than in the United States.

The initial position of the taxpayers on this appeal was that under both the home-port doctrine and the most favored nation provisions of the 1953 Treaty between the United States and Japan their containers are not subject to taxation by any jurisdiction except Japan.[2] In this connection, we note that the containers of the taxpayers are subject to property taxation in Japan and have actually been so taxed there. Similar containers, similarly used in Japan but owned and controlled by steamship companies domiciled in the United States, have not been so taxed there.

At oral argument counsel for the taxpayers advanced a new ground and an additional factual basis for their position that their containers, notwithstanding the continuous use of the containers in the United States within appellants' jurisdictions, are not subject to property taxation by any government except that of Japan. They there argued that the property taxes at issue constitute indirect tonnage duties prohibited by article I, section 10, clause 3 of the United States Constitution and, in support of one of their initial contentions that

[2]The taxpayers do not now claim though that their cargo containers have not acquired a taxable situs within California. In any event, the following language, used by our Supreme Court in *Sea-Land, supra,* 12 Cal.3d at 778, would appear to be entirely apposite: "While no specific container may be in the county for a substantial period of time, Sea-Land's containers are physically present in the county on every day of the year. Such habitual presence of containers creates a taxable situs, even though the identical containers are not there every day and even though none of the containers is continuously within the county." (Citations omitted.)

these taxes are also prohibited by applicable treaties, called our attention for the first time to the existence of the Supplementary Convention of 1964 (15 U.S.T. 1824) to the 1939 Convention between Sweden and the United States on double taxation. (54 Stat. 1759.)

We could disregard this new matter without any consideration thereof because, without any showing of justification therefor, it was presented after the normal briefing process had been concluded. (See *Lotts v. Board of Park Commrs.*, 13 Cal.App.2d 625, 636; *Sinclair v. Aquarius Electronics, Inc.*, 42 Cal.App.3d 216, 229.) But in the interest of being as fully informed as reasonably possible on the fundamental tax issue presented, we waived this obvious impropriety in the taxpayers' appellate procedure and asked for and obtained from the parties supplemental briefs on the new matter.

DISCUSSION

1. *The Home-Port Doctrine*

The taxpayers concede that in the field of interstate commerce the home-port doctrine has been superseded by the apportionment doctrine, but they argue that it is still extant in the area of foreign commerce where apportionment cannot be substituted except perhaps by treaty or other agreement. Our Supreme Court in *Scandinavian Airlines System, Inc. v. County of Los Angeles*, 56 Cal.2d 11, 15, 17, 33, 36-37 (hereafter *SAS*), applied the home-port doctrine to foreign owned, based, registered and taxed airplanes flying exclusively in foreign commerce and using Los Angeles quite infrequently as their sole United States terminus and thereby struck down the apportioned property taxes upon such planes which appellants had imposed.

In *Sea-Land*, though, our Supreme Court criticized the home-port doctrine at length (12 Cal.3d at 781-788) and labeled it "anachronistic." (*Id.* at 787.) It unanimously adopted the view of the minority in *SAS* that the possibility of international double taxation of instrumentalities of foreign commerce, which these containers admittedly are, was no reason to limit the local power to tax them upon a nondiscriminatory apportioned basis provided they had (as they did) a taxable situs here. (*Id.* at 786, 787-788.)

2. *The Tonnage Duty Prohibition*

Article I, section 10, clause 3 of the United States Constitution prohibits the imposition by states (and presumably their subdivisions) of tonnage duties. The taxpayers contend that this prohibition invalidates the local property taxes at issue since they in practical effect are tonnage duties upon the cargo containers.

We disagree. In the recent case of *Michelin Tire Corp. v. Wages* (1976) .... U.S. ...., ... [46 L.Ed.2d 495, 500], the United States Supreme Court held that the assessment by Georgia of a nondiscriminatory ad valorem property tax against imported tires was not within the constitutional prohibition against the laying of any impost or duty on imports. In support of this holding the court pointed out that imposts and duties "are essentially taxes on the commercial privilege of bringing goods into a country," while nondiscriminatory ad valorem property taxes of the kind before us are taxes by which a state apportions the costs of its general services among the beneficiaries thereof (*Michelin, supra*, at 504) and that the words "imposts" and "duties", as used in 1787, clearly meant only "exactions upon imported goods *as imports*." (Emphasis added.)

(*Id.* at 506, 502.) This being so, the taxes at issue may not be regarded as tonnage duties prohibited by article I, section 10, clause 3 of the United States Constitution.[3]

3. *The Treaty Question*

The taxpayers contend that the local taxation at issue violates certain treaty obligations of the United States and is therefore invalid under the supremacy clause of the United States Constitution (art. VI, cl. 2). (*SAS, supra,* 56 Cal.2d 11, 37.) In support of this contention they point out first, that the aforementioned 1953 Treaty between the United States and Japan (4 U.S.T. 2063) contains most favored nation provisions with respect to the ownership and possession of movable property and taxes. (Art. IX, § 2; art. XI, § 3; art. XXII, § 2; 4 U.S.T. 2071, 2072, 2079.) They then note that in the just-mentioned *SAS* case our Supreme Court held that the terms of the previously mentioned 1939 Convention between the United States and Sweden respecting double taxation (54 Stat. 1759) prevented appellants herein from generally taxing Swedish-owned property, including particularly airplanes (56 Cal.2d at 39) and, therefore, the Japanese-owned containers before us are likewise exempt from taxation by appellants pursuant to the just-mentioned most favored nation provisions of the 1953 Treaty between the United States and Japan. The *SAS* court based its

[3]In *Sea-Land, supra,* 12 Cal.3d at 789, our Supreme Court expressly rejected the contention that the similar cargo containers therein involved were exempted from local property taxation by the immediately preceding clause of the United States Constitution. According to that decision the protection against local taxation afforded by that clause extended only to goods and commodities in the import-export stream and not to the containers which were merely a means of transport suitable for repeated use.

holding largely on the provisions of article XIII, subdivision 2 of the Swedish Convention (54 Stat. 1766), applying generally apparently to movable property, but the taxpayers argue that their containers are also exempt from local property taxation by appellants under other provisions of the aforementioned Swedish Convention (arts. IV and XIII, subd. (1)(b) (54 Stat. 1761, 1766)) exempting instrumentalities of foreign commerce (i.e., ships and airplanes). Finally, the taxpayers argue that by reason of the modification made in the Swedish Convention by the aforementioned 1964 Supplementary Convention thereto (15 U.S.T. 1825) the local property taxation of appellants at issue is precluded by the provision in the convention prohibiting nonreciprocal taxation.[4]

We reject the foregoing argument totally. We do not think that either the holding of the *SAS* case or the Supplementary Convention (which came into existence after the *SAS* decision) invalidates appellants' nondiscriminatory ad valorem taxation of these containers. The *SAS* holding on its facts prohibits only local taxation of foreign owned, based and registered *airplanes.* (56 Cal.2d at 42.) It does not apply to cargo containers as such. The taxpayers seek to extend this holding nevertheless and the relevant treaty prohibi-

[4]The Supplementary Convention, among other things, replaced paragraph 7 of its protocol (54 Stat. 1777) with a new paragraph 7, reading as follows:

"7. The citizens of one of the contracting States shall not, while resident in the other State, be subject therein to other or more burdensome taxes than are citizens of that other State residing in its territory. The term 'citizens' as used in this paragraph, includes also all legal persons, partnerships, and associations created or organized under the laws in force in the respective contracting State. In this paragraph the word 'taxes' means taxes of every kind or description, whether Federal[,] State, or municipal." (15 U.S.T. 1831-1832.)

tions as well as describing both the airplanes involved in the *SAS* case and the containers involved here as instrumentalities of commerce. This generic description of ships and airplanes does not appear, in the relevant provisions of the 1939 Convention between Sweden and the United States. Furthermore, the *SAS* court did not view the airplanes there involved as instrumentalities of commerce, but instead as instrumentalities of communication, whose activities in this country were confined to the port of entry. (See 56 Cal.2d at 33.) In any event, so far as the convention with Sweden is concerned, then Justice Traynor pointed out in his dissent in the *SAS* case that, properly interpreted, this treaty does not apply to local property taxation at all. (56 Cal.2d at 47-48.)

The same thing, however, cannot be said with respect to the Supplementary Convention thereto. But in advising ratification by the United States of this convention, the United States Senate did so on the basis of a report from its Foreign Relations Committee, which stated that the replacement paragraph in its protocol (which we quoted in footnote 4) merely restated "for the sake of clarity" the requirement of its predecessor paragraph of nondiscriminatory tax treatment as between citizens and noncitizens (Tax Conventions and Protocols with Luxembourg, the Netherlands, Sweden and Japan, Report of the Senate Foreign Relations Committee, Ex. Report No. 10, 88th Cong., 2d Sess. 1964, p. 65).[5] Admittedly, the taxation at issue in this case does not violate this requirement.

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[5]In determining the effect of an international agreement as domestic law, a court of the United States is to some extent required to take into account domestic sources in the formation of an international agreement such as committee reports indicative of the meaning that the United States Senate has attached to an international agreement in cases where the agreement, as a matter of internal law, requires the assent of the Senate (Rest. 2d, Foreign Relations Law of the United States (1965) § 151, com. (b)(i) pp. 462-463, compare Traynor, J., dissent, *SAS*, *supra*, 56 Cal.2d at 48).

DISPOSITION

The judgment is reversed.

CERTIFIED FOR PUBLICATION

Cobey, *J.*

We concur:

ALLPORT, *Acting P.J.*
POTTER, *J.*

Opinion of the Supreme Court of the State of California.

In the Supreme Court of the State of California.

Japan Line, Ltd., et al., Plaintiffs and Respondents, v. County of Los Angeles et al., Defendants and Appellants. Super. Ct. Nos. SO C-25617, CO C-27593, SO C-30557.

In this action for recovery of ad valorem personal property taxes paid under protest, defendants City of Los Angeles and County of Los Angeles appeal from a judgment entered after a nonjury trial in favor of plaintiffs and against defendants for the recovery of said taxes together with interest and costs. After decision by the Court of Appeal, Second Appellate District, Division Three, reversing the judgment, we granted a hearing in this court for the purpose of giving further consideration to the issues raised. Having made a thorough examination of the cause, we have concluded that the opinion of the Court of Appeal prepared by Justice Cobey and concurred in by Acting Presiding Justice Allport and Justice Potter correctly treats and disposes of the issues involved and we adopt such opinion as and for the opinion of this court. That opinion (with appropriate additions and deletions) is as follows:*

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*Brackets together, in this manner [] *without enclosing material*, are used to indicate deletions from the opinion of the Court of Appeal; brackets *enclosing material* (other than editor's parallel citations) are, unless otherwise indicated, used to denote insertions or additions by this court. We thus avoid the extension of quotation marks within quotation marks, which would be incident to the use of such conventional punctuation, and at the same time accurately indicate the matter quoted. In so doing, we adhere to a method of adoption employed by us in the past. (See Chicago Title Ins. Co. v. Great Western Financial Corp. (1968) 69 Cal.2d 305, 311, fn. 2, and cases there cited.)

The sole question presented by this appeal upon an agreed statement from a tax refund judgment is whether appellants, the County of Los Angeles and the City of Los Angeles, may impose an apportioned ad valorem tax upon cargo shipping containers, taxed in Japan, used here essentially exclusively in foreign commerce and owned and controlled by Japanese taxpayers. These taxpayers are six shipping lines incorporated under the laws of Japan which have their principal places of business and commercial domiciles there.

FACTS

The facts as stipulated between the parties disclose that the containers at issue are in constant transit save for repair time and time awaiting new cargo. They are only intermittently physically present within the jurisdictions of appellants for an average stay of less than three weeks. They are used exclusively for the transportation of cargo for hire in foreign commerce. They are either full or empty. The full containers are loaded with cargo inbound from or outbound to foreign ports. The empty containers are moved intrastate within California and interstate from California solely to pick up cargo to be carried in foreign commerce or to return the containers themselves to ports (principally Los Angeles) for placement aboard the taxpayers' outbound vessels. The containers are never used for either intrastate or interstate transportation of cargo except in continuation of international voyages.

The Taxpayers' Contentions

Since the judgment under appeal was rendered, [] [this court] decided unanimously in the case of Sea-Land Service, Inc. v. County of Alameda [1974] 12

Cal.3d 772, 775-776, that a California county may tax such containers, under circumstances of use essentially identical to those before us, where the containers were used mainly in foreign commerce[1] but were owned by a shipping company incorporated and commercially domiciled within this country.

The taxpayers contend that the *Sea-Land* decision is not dispositive of this case because, there, Sea-Land conceded that its containers were subject to local taxation within the United States. Its position was that such taxation must be done exclusively at the home port of its vessels. (*Sea-Land, supra,* at pp. 781, 786.) Here, the home ports of the taxpayers' vessels, which are specifically designed to carry the containers at issue, are in Japan. The taxpayers' vessels are likewise registered there rather than in the United States.

The initial position of the taxpayers on this appeal was that under both the home-port doctrine and the most favored nation provisions of the 1953 treaty between the United States and Japan their containers are not subject to taxation by any jurisdiction except Japan.[2] In this connection, we note that the containers

[1]The interstate commerce therein involved was via international waters between California and the East Coast of the United States. (*Sea-Land, supra,* at p. 776.) [] [This] court made no distinction between the containers used in foreign commerce and those used in intercoastal commerce.

[2]The taxpayers do not now claim though that their cargo containers have not acquired a taxable situs within California. In any event, the following language [] in *Sea-Land, supra,* 12 Cal.3d at p. 778, would appear to be entirely apposite: "While no specific container may be in the county for a substantial period of time, Sea-Land's containers are physically present in the county on every day of the year. Such habitual presence of containers creates a taxable situs, even though the identical containers are not there every day and even though none of the containers is continuously within the county." (Citations omitted).

of the taxpayers are subject to property taxation in Japan and have actually been so taxed there. Similar containers, similarly used in Japan but owned and controlled by steamship companies domiciled in the United States, have not been so taxed there.

At oral argument [before the Court of Appeal] counsel for the taxpayers advanced a new ground and an additional factual basis for their position that their containers, notwithstanding the continuous use of the containers in the United States within appellants' jurisdictions, are not subject to property taxation by any government except that of Japan. They there argued that the property taxes at issue constitute indirect tonnage duties prohibited by article I, section 10, clause 3 of the United States Constitution and, in support of one of their initial contentions that these taxes are also prohibited by applicable treaties, called our attention for the first time to the existence of the supplementary convention of 1964 (15 U.S.T. 1824) to the 1939 convention between Sweden and the United States on double taxation. (54 Stat. 1759.)

We could disregard this new matter without any consideration thereof because, without any showing of justification therefor, it was presented after the normal briefing process had been concluded. (See Lotts v. Board of Park Commrs. [1936] 13 Cal.App.2d 625, 636; Sinclair v. Aquarius Electronics, Inc. [1974] 42 Cal.App.3d 216, 229.) But in the interest of being as fully informed as reasonably possible on the fundamental tax issue presented, [] [the Court of Appeal] waived this obvious impropriety in the taxpayers' appellate procedure and asked for and obtained from the parties supplemented briefs on the new matter.

DISCUSSION

1. *The Home-port Doctrine*

The taxpayers concede that in the field of interstate commerce the home-port doctrine has been superseded by the apportionment doctrine, but they argue that it is still extant in the area of foreign commerce where apportionment cannot be substituted except perhaps by treaty or other agreement. [] [They urge that] in Scandinavian Airlines System, Inc. v. County of Los Angeles [1961] 56 Cal.2d 11, 15, 17, 33, 36-37 (hereafter *SAS*), [this court] applied the home-port doctrine to foreign owned, based, registered and taxed airplanes flying exclusively in foreign commerce and using Los Angeles quite infrequently as their sole United States terminus and thereby struck down the apportioned property taxes upon such planes which appellants had imposed.

[] [However, in *Sea-Land* we specifically addressed this very contention (12 Cal.3d at pp. 784-786), namely that the home-port doctrine retained vitality with respect to foreign commerce as distinguished from interstate commerce pursuant to our decision in *SAS*, and clearly rejected it. First, we concluded that "we are not inhibited by *SAS* from concluding that the home-port doctrine does not shield the property of a taxpayer from a fairly apportioned ad valorem tax levied by a nondomiciliary jurisdiction with which the taxpayer has sufficient contacts, even if the taxpayer is engaged in foreign commerce. . . . The principles of apportioned taxation enunciated in *Pullman, Ott* and *Braniff* are to be applied to instrumentalities so engaged." (*Id.* at p. 786.) Second, we specifically adopted the reasoning of Justice Traynor in his dissent in *SAS* to the

effect that the threat of double taxation from foreign taxing authorities has no role in commerce clause considerations of multiple burdens, since burdens in international commerce are not attributable to discrimination by the taxing state and are matters for international agreement. (*Id.* at p. 788.)

The only asserted distinction between the case at bench and *Sea-Land* is that the cargo shipping containers in *Sea-Land* were owned by a United States corporation whereas the containers herein are owned by foreign corporations. The taxpayers have failed to cite any authority which would support a conclusion that instrumentalities of commerce used in foreign commerce are subject to different constitutional protection depending upon whether they are owned by foreign or domestic corporations. Existing authority supports the opposite conclusion. For example in Canadian Pac. Ry. Co. v. King Co. (1916) 90 Wash. 38, the Washington Supreme Court rejected the home-port doctrine and applied to a Canadian railway corporation the apportionment rule applied by the United States Supreme Court to the rolling stock of a domestic railway corporation used in foreign commerce in Pullman's Car Co. v. Pennsylvania (1891) 141 U.S. 18, 23. *Sea-Land* is fully dispositive of the commerce clause and federal exclusivity issues raised in the case at bench.]

2. *The Tonnage Duty Prohibition*

Article I, section 10, clause 3 of the United States Constitution prohibits the imposition by states [] of tonnage duties. The taxpayers contend that this prohibition invalidates the local property taxes at issue since they in practical effect are tonnage duties upon the cargo containers.

We disagree. In the recent case of Michelin Tire Corp. v. Wages (1976) 423 U.S. 276, the United States Supreme Court held that the assessment by Georgia of a nondiscriminatory ad valorem property tax against imported tires was not within the constitutional prohibition against the laying of any impost or duty on imports. In support of this holding the court pointed out that imposts and duties "are essentially taxes on the commercial privilege of bringing goods into a country," while nondiscriminatory ad valorem property taxes of the kind before us are taxes by which a state apportions the costs of its general services among the beneficiaries thereof (*Michelin, supra,* at pp. 286-287) and that the words "imposts" and "duties," as used in 1787, clearly meant only "exactions upon imported goods *as imports.*" (Italics added.) (*Id.* at pp. 290-291, 283.)[8] [ ]

[The taxpayers contend that the *Michelin* holding that a nondiscriminatory ad valorem property tax was not an "impost" or "duty" is not determinative of the case at bench because the cargo containers herein were in import-export transit. They urge that the court in *Michelin* specifically stressed that the goods in that case were no longer in import transit. (See 423 U.S. at pp. 286, 302.) The contention is of no avail to taxpayers.

The cargo containers are not being taxed while in transit. Rather they are being taxed on an apportioned

[8]In *Sea-Land, supra,* 12 Cal.3d at p. 789, [ ] [we] expressly rejected the contention that the similar cargo containers therein involved were exempted from local property taxation by the [ ] [import-export] clause of the United States Constitution. [ ] [T]he protection against local taxation afforded by that clause extended only to goods and commodities in the import-export stream and not to the containers which were merely a means of transport suitable for repeated use.

basis for their continuous presence in the state. Some containers are continuously present in the state throughout the year, even though not necessarily the same containers. The continuous presence of these containers, as well as any instrumentality of commerce, involves the constant use of many services provided by the state and, here, the county; e.g., harbor facilities, roads, bridges, water supply, as well as fire and police protection. The Supreme Court has held that states may impose a property tax on these moving instrumentalities of commerce on an apportioned basis in order to meet the expenses of services within the taxing jurisdiction. (Clyde Mallory Lines v. Alabama (1935) 296 U.S. 261, 265-266; Cox v. Lott (1870) 79 U.S. 204, 213; Pullman's Car Co. v. Pennsylvania, *supra,* 141 U.S. 18.) In *Sea-Land* we affirmed the apportionment formula used in the case at bench to determine the continuous presence of the cargo containers there involved. It is the continuous presence within the jurisdiction drawing upon the service of that jurisdiction to a significant degree which permits reimbursement through nondiscriminatory property taxation as opposed to the fleeting presence of imported goods in transit which may possibly be exempted from such taxation by *Michelin.*

If *Michelin* is inapplicable to resolution of the issues herein as taxpayers contend, then the traditional tonnage clause analysis applies, *viz.,* while the tonnage clause prohibits states from taxing access to their territories, it does not prohibit states from making charges for services rendered and enjoyed by those instrumentalities of foreign or insterstate commerce within their jurisdiction. (Clyde Mallory Lines v. Alabama, *supra,* 296 U.S. 261, 265-266; Cox v. Lott, *supra,* 79 U.S. 204, 213.) The court in *Michelin* pointed out that

nondiscriminatory ad valorem property taxes are taxes by which the state apportions the costs of services, such as police and fire protection. (423 U.S. at p. 287.) Even under traditional tonnage clause analysis this property tax would be valid.

Thus plaintiffs' further insistent assertion that the tax liability is created by entry into the taxing jurisdiction must fall and with it the contention that the tax herein is a tonnage duty levied upon the entry of the containers into the jurisdiction.]

3. *The Treaty Question*

The taxpayers contend that the local taxation at issue violates certain treaty obligations of the United States and is therefore invalid under the supremacy clause of the United States Constitution (art. VI, cl. 2). (*SAS, supra,* 56 Cal.2d 11, 37.) In support of this contention they point out first, that the aforementioned 1953 treaty between the United States and Japan (4 U.S.T. 2063) contains most favored nation provisions with respect to the ownership and possession of movable property and taxes. (Art. IX, § 2; art. XI, § 3; art. XXII, § 2; 4 U.S.T. 2071, 2072, 2079.) They then note that in the just-mentioned *SAS* case [] [we] held that the terms of the previously mentioned 1939 convention between the United States and Sweden respecting double taxation (54 Stat. 1759) prevented appellants herein from generally taxing Swedish-owned property, including particularly airplanes (56 Cal.2d at p. 39) and, therefore, the Japanese-owned containers before us are likewise exempt from taxation by appellants pursuant to the just mentioned most favored nation provisions of the 1953 treaty between the United States and Japan. [] [This court in *SAS*] based its

holding largely on the provisions of article XIII, subdivision 2 of the Swedish convention (54 Stat. 1766), applying generally apparently to movable property, but the taxpayers argue that their containers are also exempt from local property taxation by appellants under the provisions of the aforementioned Swedish convention (arts. IV and XIII, subd. (1)(b); 54 Stat. 1761, 1766) exempting instrumentalities of foreign commerce (i.e., ships and airplanes). Finally, the taxpayers argue that by reason of the modification made in the Swedish convention by the aforementioned 1964 supplementary convention thereto (15 U.S.T. 1825) the local property taxation of appellants at issue is precluded by the provision in the convention prohibiting nonreciprocal taxation.[4]

We reject the foregoing argument totally. We do not think that either the holding of the *SAS* case or the supplementary convention (which came into existence after the *SAS* decision) invalidates appellants' nondiscriminatory ad valorem taxation of these containers. The *SAS* holding on its facts prohibits only local taxation of foreign owned, based and registered *airplanes*. (56 Cal.2d at p. 42.) It does not apply to cargo containers as such. The taxpayers seek to extend this holding nevertheless and the relevant treaty

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[4]The supplementary convention, among other things, replaced paragraph 7 of its protocol (54 Stat. 1777) with a new paragraph 7, reading as follows:

"7. The citizens of one of the contracting States shall not, while resident in the other State, be subject therein to other or more burdensome taxes than are citizens of that other State residing in its territory. The term 'citizens' as used in this paragraph, includes also all legal persons, partnerships, and associations created or organized under the laws in force in the respective contracting State. In this paragraph the word 'taxes' means taxes of every kind or description, whether Federal[,] State, or municipal." [15 U.S.T. 1831-1832.)

prohibitions as well by describing both the airplanes involved in the *SAS* case and the containers involved here as instrumentalities of commerce. This generic description of ships and airplanes does not appear, in the relevant provisions of the 1939 convention between Sweden and the United States. [] In any event, so far as the convention with Sweden is concerned, [] [as] Justice Traynor pointed out in his dissent in the *SAS* case that, properly interpreted, this treaty does not apply to local property taxation at all. (56 Cal.2d at pp. 47-48.)

The same thing, however, cannot be said with respect to the supplementary convention thereto. But in advising ratification by the United States of this convention, the United States Senate did so on the basis of a report from its Foreign Relations Committee, which stated that the replacement paragraph in its protocol (which we quoted in fn. 4) merely restated "for the sake of clarity" the requirement of its predecessor paragraph of nondiscriminatory tax treatment as between citizens and non-citizens (Tax Conventions and Protocols with Luxembourg, the Netherlands, Sweden and Japan, Rep. of the Sen. Foreign Relations Com., Ex. Rep. No. 10, 88th Cong., 2d Sess. at p. 65 (1964)).[5] Admittedly the taxation at issue in this case does not violate this requirement.

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[5]In determining the effect of an international agreement as domestic law, a court of the United States is to some extent required to take into account domestic sources in the formation of an international agreement such as committee reports indicative of the meaning that the United States Senate has attached to an international agreement in cases where the agreement, as a matter of international law, requires the assent of the Senate (Rest. 2d Foreign Relations Law of the United States (1965) § 151, com. (b)(i), pp. 462-463; compare Traynor, *J.*, dissent, *SAS, supra,* 56 Cal.2d at p. 48).

DISPOSITION

The judgment is reversed.

[]

Manuel, *J.*

We concur:

Bird, *C. J.*
Tobriner, *J.*
Mosk, *J.*
Clark, *J.*
Richardson, *J.*
*Jefferson, *J.*

*Assigned by the Chairperson of the Judicial Council.

Order Modifying Opinion.

In the Supreme Court of the State of California.

Japan Line, Ltd., et al, Plaintiffs and Respondents, v. County of Los Angeles et al., Defendants and Appellants, L.A. 30703 Super Ct. Nos. SO C-25617, SO C-27593, SO C-30557. Filed Dec. 28, 1977.

THE COURT:

It is ordered that the opinion filed herein on November 18, 1977, and reported in the Official Reports (20 Cal.3d 180) be modified in the following particulars:

1. On page 187, line 7 of the second full paragraph, the words "the county" are changed to the words "local entities" so the sentence reads:

> The continuous presence of these containers, as well as any instrumentality of commerce, involves the constant use of many facilities provided by the state and here, local entities; e.g., harbor facilities, roads, bridges, water supply, as well as fire and police protection.

Clerk's Office, Supreme Court, 4250 State Building, San Francisco, California 94102.

Dec. 28, 1977

I have this day filed Order Rehearing Denied In re: L.A. No. 30703 Japan Line, Ltd. vs. County of Los Angeles

Respectfully,
G. E. Bishel
Clerk